

**REQUEST FOR RESPONSES (RFR)**  
**EOEEA SUPPLEMENTAL TERMS AND CONDITIONS**

1. For the purposes of these *Supplemental Terms and Conditions*, Department shall mean the Executive Office of Energy and Environmental Affairs (EOEEA) and the office requesting Responses as identified within this RFR.
2. These *Supplemental Terms and Conditions* are incorporated by reference into this RFR. If any amendment, attachment [not including the Commonwealth's *Standard Terms and Conditions*, *Standard Form Contract*, or any other form jointly published by the Executive Office for Administration and Finance (EOAF), the Office of the Comptroller (CTR) and the Operational Services Division (OSD), or any provision or form required by State or Federal law] or other part of this RFR deletes, modifies, replaces or otherwise contains language that conflicts with these *Supplemental Terms and Conditions*, these *Supplemental Terms and Conditions* shall supersede and control to the extent necessary to accomplish these conditions. The remaining provisions of this RFR shall remain in effect and enforced to the fullest extent permitted.
3. The Commonwealth's *Standard Terms and Conditions* [as currently and jointly issued by EOAF, CTR, and OSD] are incorporated by reference into this RFR. To the extent that any amendment, attachment, condition or other part of this RFR deletes, modifies, replaces or otherwise contains language that conflicts with the Commonwealth's *Standard Terms and Conditions*, the official printed language of the Commonwealth's *Standard Terms and Conditions* shall supersede and control to the extent necessary to accomplish its conditions. The remaining provisions of this RFR shall remain in effect and enforced to the fullest extent permitted.
4. The terms of 801 CMR 21.00: Procurement of Commodities and Services (and 808 CMR 1.00: Compliance, Reporting and Auditing for Human and Social Services, if applicable) are incorporated by reference into this RFR. For Grants, 815 CMR 2.00: Grants and Subsidies shall apply and be incorporated into this RFR. Words used in this RFR shall have the meanings defined in 801 CMR 21.00 or 815 CMR 2.00 (and 808 CMR 1.00, if applicable). Additional definitions may also be identified in this RFR. Unless otherwise specified in this RFR, all communications, Responses, and documentation must be in English, all measurements must be provided in feet, inches, and pounds and all cost proposals or figures in U.S. currency. All Responses must be submitted in accordance with the specific terms of this RFR. No electronic Responses may be submitted in Response to this RFR.
5. Respondent Communication. Respondents are prohibited from communicating directly with any employee of EOEEA except as specified in this RFR, and no other individual Commonwealth employee or representative is authorized to provide any information or respond to any question or inquiry concerning this RFR. Respondents may contact the contact person for this RFR in the event this RFR is incomplete or the Respondent is having trouble obtaining any required attachments electronically through Comm-PASS.
6. Reasonable Accommodation. Respondents with disabilities or hardships that seek reasonable accommodation, which may include the receipt of this RFR information in an alternative format, must communicate such requests in writing to the contact person. Requests for accommodation will be addressed on a case by case basis. A Respondent requesting accommodation must submit a written statement, which describes the Respondent's disability and the requested accommodation to the contact person for the RFR. The Department reserves the right to reject unreasonable requests.

The Department may require the Contractor to provide all materials, software, maps, studies, reports, and other products or data in alternative formats upon request.

7. Public Records. All Responses and information submitted in response to this RFR are subject to the Massachusetts Public Records Law, M.G.L. Chapter 66, section 10 and Chapter 4, section 7(26). Any statements in submitted Responses that are inconsistent with the Public Records Law shall be void and disregarded.
8. All materials, software, maps, studies, reports, and other products or data, regardless of physical form or characteristics, produced in furtherance of the Contract and funded, in whole or in part, under the Contract shall be considered in the public domain and available to EOEEA or its agencies at the reasonable cost of reproduction in any of the formats in which it is stored or maintained. The Contractor shall not obtain, attempt to obtain or file for a patent, copyright, trademark or any other interest in any such materials, software, maps, reports, and other products or data without the express, written consent of the Department and subject to any other approvals required by state or federal law.
9. Best Value Selection and Negotiation. The Department may select the Response(s), which demonstrates the best value overall, including proposed alternatives, that will achieve the procurement goals of the Department. The Department and a Selected Respondent, or a Contractor, may negotiate a change in any element of contract performance or cost identified in the original RFR or the Selected Respondent's or Contractor's Response which results in lower costs or a more cost effective or better value than was presented in the Selected Respondent's or Contractor's original Response.
10. The Department reserves the right to fund a portion, change the scope, and/or delete tasks of any Response to more closely meet the purposes of the program or to obtain the best procurement value for the Department. Selected Respondents may decide not to enter into a contract if the revised scope does not meet its approval. The Department does not guarantee that any Contract will be awarded under the RFR. Any potential Contract with a Selected Respondent shall be subject to the appropriation and availability of funds.
11. Costs. Costs that are not specifically identified in the Respondent's Response, and accepted by a Department as part of a Contract, will not be compensated under any contract awarded pursuant to this RFR. The Commonwealth will not be responsible for any costs or expenses incurred by Respondents responding to this RFR.
12. Comm-PASS. This RFR has been distributed electronically using the Comm-PASS system, RFR attachments that are referenced will be found either as separate .pdf files along with the RFR at **[www.comm-pass.com](http://www.comm-pass.com)**, or in the "OSD Forms" section at **[www.mass.gov/osd](http://www.mass.gov/osd)**. Respondents are solely responsible for obtaining and completing required attachments that are identified in this RFR and for checking Comm-PASS for any addenda or modifications that are subsequently made to this RFR or attachments. The Commonwealth and its subdivisions accept no liability and will provide no accommodation to Respondents who fail to check for amended RFRs and submit inadequate or incorrect Responses. Respondents are advised to check the "last change" field on the summary page of RFRs for which they intend to submit a Response to ensure that they have the most recent RFR files. Respondents may not alter (manually or electronically) the RFR language or any RFR component files. **Modifications to the body of the RFR, specifications, terms and**

**conditions are prohibited and may disqualify a Response.** Respondents having difficulty obtaining any required attachments electronically through Comm-PASS should seek assistance from the contact person for this RFR.

If the Department is also distributing this RFR directly to Respondents, those Respondents, that requested and received a copy of this RFR directly from the Department, will be sent a copy of any modifications or amendments to the RFR by the Department.

13. Subcontracting. Prior written approval of the Department is required for any subcontracted service (which includes consultants) of the contract. Contractors are responsible for the performance and oversight of its subcontractors. Subcontractors are required to meet the same state and federal financial and program reporting requirements and are held to the same reimbursable cost standards as contractors.
14. Affirmative Market Program (For Contracts over \$50,000 only, Not applicable to Grants). Massachusetts Executive Order 390 established a policy to promote the award of state contracts in a manner that develops and strengthens Minority and Women Business Enterprises (M/WBEs). As a result, Non-M/WBE Respondents are strongly encouraged to develop creative initiatives to help foster *new business relationships* with M/WBEs within the primary industries affected by this RFR. The highest number of points will be awarded for Responses that clearly illustrate how the proposed business relationship(s) will result in the development and growth of M/WBEs within these primary industries. A lesser number of points will be awarded for traditional subcontracting relationships. The least number of points will be awarded for ancillary uses of M/WBEs.

In order to satisfy this section, the Respondent must submit: the names, addresses, phone numbers and contact persons of each M/WBE firm; a description of each business relationship to be established; and the actual dollar amounts, or percentages, to be awarded to each M/WBE firm. MBE and WBE firms must submit a copy of their SOMWBA certification letter for the current period. A directory of SOMWBA certified firms is available via the internet at **[www.mass.gov/somwba](http://www.mass.gov/somwba)**. M/WBEs are strongly encouraged to submit Responses to this RFR, either as prime vendors, as joint venture partners, or as subcontractors.

A Minority Business Enterprise (MBE) or a Woman Business Enterprises (WBE) is defined as a business that has been certified as such by the State Office of Minority and Women Business Assistance (SOMWBA). Minority and women-owned firms that are not currently SOMWBA-certified but would like to be considered as an M/WBE for this RFR should apply for certification. A fast track application is available, and will be considered for the purposes of this RFR. For further information on SOMWBA certification contact the State Office of Minority and Women Business Assistance at (617) 727-8692 or via the internet at **[www.mass.gov/somwba](http://www.mass.gov/somwba)**.

15. The Commonwealth makes no guarantee that any commodities or services will be purchased from any contract resulting from this RFR. Any projected estimates or past procurement volumes referenced in this RFR are included only for the convenience of Respondents, and are not to be relied upon as any indication of future purchase levels.
16. Unless otherwise specified in this RFR, any reference to a particular trademark, trade name, patent, design, type, specification, producer or supplier is not intended to restrict this RFR to any manufacturer or proprietor or to constitute an endorsement of any commodity or service, and the

Department may consider clearly identified offers of substantially equivalent commodities and services submitted in response to such reference.

17. Alternatives. A Response which fails to meet any material term or condition of the RFR, including the submission of required attachments, may lose points or may be deemed unresponsive and disqualified. Unless otherwise specified, Respondents may submit Responses proposing alternatives which provide equivalent, better or more cost effective performance than achievable under the stated RFR specifications. These alternatives may include related commodities or services that may be available to enhance performance during the period of the contract. The Response should describe how any alternative achieves substantially equivalent or better performance to that of the RFR specifications. The Department will determine if a proposed alternative method of performance achieves substantially equivalent or better performance. The goal of this RFR is to provide the best value of commodities and services to achieve the procurement goals of the Department. Respondents that propose discounts, uncharged commodities and services or other benefits in addition to the RFR specifications may receive a preference or additional points under this RFR as specified.
18. Contract Expansion. In limited circumstances, if additional funds become available during the contract duration period as established in the RFR, the Department reserves the right to increase the maximum obligation to some or all contracts executed as a result of this RFR or to execute new contracts based on applications not funded in the initial selection process, subject to satisfactory contract performance and service or commodity need and at the discretion of the Secretary.
19. Environmentally Preferable Products and Services. At the Department's sole discretion, the Department and contractor may negotiate during the contract term to permit the substitution or addition of Environmentally Preferable Products (EPPs) when such products become available at a competitive cost and satisfy the Department's performance needs. Unless otherwise specified in the RFR, during evaluation of Responses, an EPP may be considered best value even when the price is greater than (but does not exceed 10% in price) that of a non-EPP. Respondents are encouraged to submit appropriate information to identify important environmental attributes of items being procured, even when such attributes are not being required. Information or technical assistance regarding EPPs may be obtain from OSD at 617-727 7500 ext. 351 or via the internet at <http://www.mass.gov/epp/products.htm>
20. GIS Standards. All GIS (Geographic Information System) data collected, compiled or created under this RFR shall conform to standards developed or established by the Office of Geographic and Environmental Information (a/k/a MassGIS) within EOEEA. Such GIS data shall be made available to MassGIS upon request and at the reasonable cost of reproduction (cost to copy and/or transmit the data to MassGIS).
21. Nothing in this RFR authorizes or purports to grant the right to any Respondent, governmental entity or other person to enter or remain on any public or private property. If access to any property is necessary in any way for any purpose, such as responding to this RFR (e.g. surveying), that Respondent, governmental entity or other person must obtain appropriate permission authorizing such access from the person or governmental agency that has lawful control of the property.

## **22. Debriefings and Appeals. (Applicable to Procurement of Services only, not applicable to Grants)**

Any Respondent not selected may request a debriefing for the purposes of examining the Respondent's response with a member of the RFR review team. This debriefing will be solely for the purpose of examining this response as submitted. Debriefings are designed to identify the weak areas of a response and suggest improvements for future procurements. Comparisons with other responses will not be made during a debriefing.

If a Respondent is still unsatisfied with the selection process, that Respondent may submit a request in writing to EOEEA for a formal review of the RFR selection process by EOEEA staff.

In order to be considered for an appeal at EOEEA, the Respondent's request must meet the following criteria:

- 1) The request for formal review must be submitted via first class mail to:

Ian A. Bowles  
Secretary of Energy and Environmental Affairs  
100 Cambridge Street, Suite 900  
Boston, MA 02114

With a copy to the Contact Person for this RFR identified above.

- 2) The request must be submitted to EOEEA within 10 days of the date of the debriefing meeting. Attendance at a debriefing is a prerequisite to filing a formal request for review.

- 3) The request must detail specific allegations that:

- a) the department failed to comply with applicable purchase of service regulations and guidelines. These would be limited to the requirements of 801 CMR 21.00 or any successor regulations, the *Procurement Policies and Procedures Handbook*, policies and procedures issued by OSD and the specifications of the RFR; or
- b) there was a fundamental unfairness in the procurement process.

EOEEA may reject appeal requests based on grounds other than those stated above or those submitted without sufficient detail on the basis for the appeal.

If EOEEA grants the request for a hearing, EOEEA will establish a date and time for a meeting with the Respondent that will allow the Respondent to present the allegations outlined in the request in person. The meeting will be scheduled by EOEEA within five days of receipt of the request.

Non-successful Respondents who participate in the EOEEA appeal process and remain aggrieved by the selection decision of the department may appeal the department decision to the Operational Services Division. The basis for an appeal to OSD is limited to the following grounds:

1. The competitive procurement conducted by the department failed to comply with applicable regulations and guidelines. These would be limited to the requirements of 801 CMR 21.00 or any successor regulations, the *Procurement Policies and Procedures Handbook*, subsequent policies and procedures issued by OSD, and the specifications of the RFR; or

2. There was a fundamental unfairness in the procurement process. The allegation of unfairness or bias is one that is easier to allege than prove, consequently, the burden of proof rests with the Respondent to provide sufficient and specific evidence in support of their claim. OSD will presume that departments conducted a fair procurement absent documentation to the contrary.

Requests for an appeal must be sent to the attention of the Deputy Purchasing Agent at Room 1017, One Ashburton Place, Boston, MA 02108 and be received within fourteen (14) calendar days of the

postmark of the notice of the department head's decision on appeal. Appeal requests must specify in sufficient detail the basis for the appeal. Sufficient detail requires a description of the published policy or procedure, which was applied and forms the basis for the appeal and presentation of all information that supports the claim under paragraphs 1 or 2 above.

OSD reserves the right to reject appeal requests based on grounds other than those stated above or those submitted without sufficient detail on the basis for the appeal.

The decision of the Deputy Purchasing Agent shall be rendered, in writing, setting forth the grounds for the decision within sixty (60) calendar days of receipt of the appeal request. Pending appeals to the Deputy Purchasing Agent shall not prohibit the department from proceeding with executing contracts.